

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 295 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

PETRO-FILS CO OP LTD

Appearance:

MR MIHIR JOSHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 16/04/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court under Section 256(1) of the Income Tax Act, the following question:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the interest and miscellaneous receipts were not liable to be assessed as income under the Income Tax Act, 1961?"

The matter pertains to Assessment Years 1976-77 and 1977-78. The assessee is a co-operative society, which is assessable in the status of AOP. The assessee was in the process of setting up its business of manufacturing filament yarn. Admittedly, production had not commenced during the relevant previous years. In the return of income, assessee had disclosed "Nil" income stating that since the production has not yet started, the loss was to be capitalised after the production starts. The ITO however, held that the interest income of Rs. 27,568/- and the miscellaneous income of Rs. 1,026/- which the assessee received during the relevant previous year of 1976-77, was taxable. Similarly, in respect of Assessment Year 1977-78, he held that the interest amount of Rs. 1,56,151/- and miscellaneous income of Rs. 923/- were taxable as 'other income'. The ITO however, allowed deduction of 5 per cent expenses for the Assessment Year 1977-78. The CIT (Appeals) confirmed the decision of the ITO, but raised deduction of expenditure to 10 per cent as against the 5 per cent allowed by the ITO for the Assessment Year 1977-78. The Tribunal however, held that the receipts in question should be treated as reduction in project cost and cannot be treated as income in the ordinary sense and allowed the appeal of the assessee.

Admittedly, when the factory of the assessee was under construction, it had borrowed funds from various sources which were kept by the assessee in banks as short term deposits and had received the aforesaid interest income. The miscellaneous income comprised merely income by sale of old newspapers and small recoveries from contractors for water, electricity etc.

The question similar to the one which is referred in this matter had come up for consideration before the Hon'ble Supreme Court in Tuticorin Alkali Chemicals Vs. CIT, reported in 227 ITR 172, in which it has been held that if a person borrows money for business purposes, but utilises that money to earn interest, howsoever temporarily, the interest so generated will be his income. Such income can be utilised by the assessee whichever way he likes. He may or may not discharge his liability to pay interest with this income. It was held

that merely because such income was utilised to repay the interest on the loan taken by the assessee, it did not cease to be his income. It was also held that the accounting practice cannot over-ride the provisions of Section 56 or any other provisions of the Income Tax Act. The interest income and other miscellaneous income fell under the head "Income from other sources", within the meaning of Section 56 of the said Act. The said income of the assessee was clearly of revenue nature and was required to be taxed accordingly as income from other sources. The decision of the Tribunal that the said interest and miscellaneous receipts were not liable to be assessed as income, is therefore erroneous and contrary to the ratio of the decision of the Supreme Court in Tuticorin Alkali Chemicals Vs. CIT (supra). We therefore, answer the question referred to us in the negative in favour of the Revenue and against the assessee. This reference stands disposed of accordingly with no order as to costs.

*/Mohandas